IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1480 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLADEVI NARAYAN SITOLA

Versus

ASSISTANT EXAMINER OF LOCAL FUND ACCOUNTS

Appearance:

MR NILESH A PANDYA for Petitioner No. 1

GOVERNMENT PLEADER for Respondents No. 1-2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/12/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to continue to pay the petitioner as per the provisions of Government Employees' Widow Pension Scheme regularly and for further direction to pay arrears from November, 1977 to June 1982 immediately to the petitioner with interest at the rate of 18% p.a.

2. It is stated that the petitioner's husband was

originally working in the office of the Gaekwad State of Vadodara as "Rajguru" during the year 1939 to 1949. Thereafter, the Gaekwad State of Baroda was merged into former Bombay State and the Officer on Special Duty, Vadodara informed the deceased husband of the petitioner that he should report for duties immediately in the office of Baroda Taluka, Mamlatdar as an Accounts Clerk. But the petitioner's husband opted for taking the benefits of pension. Accordingly, the petitioner started to draw the pension and then the respondents granted pension to the husband of the petitioner since 1951 till his death i.e. upto 21-10-1977. It is further stated that the petitioner applied to the respondents for family pension scheme. As per the decision of this Court as the husband of the petitioner was treated as a Government servant and therefore the petitioner is entitled to the pensionary benefits as given to other Government employees. The petitioner is entitled to the family pension from November 1977 to 1-7-1982 but the pension for the said period was not sanctioned without giving any reason. The petitioner submitted an application to the respondents for giving pensionary benefits which were paid to the widows of the Government employees during 1987. On her application, the petitioner was granted pensionary benefits with effect from 1-7-1982. Thus, the petitioner started to get pensionary benefits at the rate of Rs.375/- p.m. from 1-4-1988 and the respondents before making payment of arrears which the petitioner was entitled to from 1-7-1982 to 31-3-1988, the petitioner has got regular pension from the office of the respondents. It appears that the petitioner is getting only amount of widow pension under the provisions of Government Employees' Widow Pension Scheme.

3. The respondent issued notice to the petitioner on 7-1-1991 to the effect that the petitioner was not entitled to the pension under the Widow Pension Scheme, from 1982 to 31-9-1989 as per the notifications mentioned in the notice. Therefore, the petitioner is required to refund the pension amount which has been paid to the petitioner. The respondents have no right to issue such notice for recovery of amount of pension which has already been paid by the respondents to the petitioner. In fact, the petitioner is entitled to the benefits of the Government Employees' Widow Family Pension Scheme. The respondent has no right to discontinue pension which is given to the petitioner.

4. The petitioner was issued the notice wherein it is stated that the respondent has paid pension amount to the petitioner to which she was entitled to. The

petitioner was directed to remain present on 18-2-1991 for personal hearing. It is submitted that the petitioner is 66 years of age and she is not in a position to attend the office of the respondent due to bed-rest. However, the petitioner sent another person on her behalf to represent her on 18-2-1991 before the respondent no.1. On that date, the respondent no. 1 was not available and hence no opportunity of hearing was given to the petitioner's representative. The respondent gave another fresh notice dated 11-3-1991 requiring the petitioner to represent her case within 15 days. But the petitioner was not able to attend the same on 11-3-1991 due to some eye illness. As such, the orders passed by the respondents are illegal, arbitrary and are not sustainable in the eye of law.

5. The affidavit-in-reply has been field on behalf of the respondents no. 1 and 2 stating therein it is stated that sufficient opportunity of hearing was given to petitioner. The son of the petitioner reached at the office on 18-2-1991. At that time, the orders of Government were shown and explained to him and he requested for 15 days' time. After 15 days' time nobody turned up. Thereafter, another letter dated 5-3-1991 was sent to the petitioner to remain present in the office for discussion. But again the petitioner did not turn up. The petitioner's son and her advocate came to the office on 15-3-1991 and handed over the notice of this Court. The sufficient opportunity of being heard has been given to the petitioner. The Government has issued the orders vide G.R. in Finance Department dated 5-3-2001 to sanction family pension with effect from 1-4-1992 to those widows whose husband has retired/died before 1-5-1960. In the present case, the husband of the petitioner retired before 1-5-1960. The Officer of the respondents requested this Court to permit him to sanction family pension to the petitioner from 1-4-1992 and out of the difference of family pension to adjust the amount of Rs.14,000/- which has been wrongly paid to the petitioner during 1-7-1982 to 30-9-1989 due to incorrect statement made in the affidavit by the petitioner.
6. I have considered the submissions made by the learned counsel for the parties and perused the relevant material on record.

7. It is further stated in that affidavit-in-reply that since the husband of the petitioner was a servant of erstwhile Gaekwad State, his pension was debited to budget head 54-B the petitioner is entitled for lum-sum financial assistance w.e.f. 1-10-1989 instead of from 1-7-1982 according to G.R. in FD. dated 23-12-1878,

Therefore, the payment received by the petitioner towards financial assistance from 1-7-1982 to 30-9-1989 requires to be refunded in Government, as she is not entitled for that amount.

8. Similar question was raised in a group of petitions being Special Civil Applications No. 746/93, 759/93, 14489/93, 5410/94, 9359/95 and 2108/97 and in that group of matters this Hon'ble Court vide order dated 5-5-2000 the department concerned to treat the writ petition as representation and consider the claim of widows for recovery of arrears of Family Pension benefits for the period commencing from 1-10-1977 to 31-3-1992 objectively and pursuant to the order dated 5-5-2001 of this Court the State Government considered the matter regarding claim of the petitioners of that group of petitions and the State Government accepted the claim of the petitioners of those petitions as compensatory pension to the widows. The remaining part of the claim regarding pension from 1-10-1977 to 31-3-1992 has been rejected. On the basis of that resolution, the learned A.G.P. submitted that the petitioner is entitled for pensionary benefits from 1-4-1992 as she is getting widow family pension, the petitioner is entitled to the family pension from 1-4-1992 as per G.R. dated 5-5-2001.

9. In view of the facts and circumstances of this case and above discussion, similar type of petitions have already been considered by the State Government and the claim of similar type has been accepted by the State Government from 1-4-1992. Accordingly, this petition is allowed in part and the respondents are directed to pay the amount of pension as per G.R. dated 5-5-2001. It is stated that though the Court's order such amount from 1-4-1992 is being given to the petitioner as per family pension scheme. So far as the question regarding adjustment of Rs.14,000/- paid to the petitioner is concerned, it is a matter between the petitioner and the State Government. If that amount of Rs.14,000/- has been wrongly paid, the State Government is entitled to adjust that amount of Rs.14,000/-. It is also stated that this amount has been given as financial assistance to the petitioner. If that amount of Rs.14,000/- has been paid as financial assistance, the respondents should not recover the same from the petitioner. However, it is open to the respondents to consider and decide that question with regard to payment of Rs.14,000/- made to the petitioner by the State Government in accordance with law and in the light of the relevant Government G.Rs. Rule is made absolute to the aforesaid extent, with no order as to costs.

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